

AS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-239-C - ORDER NO. 97-753
SEPTEMBER 3, 1997

JMR

IN RE: Proceeding to Establish Guidelines) ORDER
for an Intrastate Universal Service) ADDRESSING
Fund.) THE UNIVERSAL
) SERVICE FUND
)
)

This matter comes before the Public Service Commission of South Carolina for the establishment of an intrastate Universal Service Fund (USF), pursuant to South Carolina Code Ann. Section 58-9-280(E) (Supp. 1996). The original concept for this proceeding originated under our Docket No. 96-018-C, however, we subsequently ordered the opening of a new Docket to deal with Universal Service issues.

Accordingly, a hearing was held, beginning on August 4, 1997 in the offices of the Commission, with the Honorable Guy Butler, Chairman, presiding. The local exchange carriers (LECs) participating individually were GTE South, Inc. (GTE), BellSouth Telecommunications, Inc. (BellSouth) and United Telephone Company of the Carolinas, Inc. (United). Other LECs participated through the South Carolina Telephone Association (SCTA). Intervenor participants were MCI Telecommunications Corporation (MCI), The Alliance for South Carolina's Children (the Alliance), AT&T

Communications of the Southern States, Inc. (AT&T), the South Carolina Budget and Control Board (the Board), the Consumer Advocate for the State of South Carolina (the Consumer Advocate), the South Carolina Cable Television Association (SCCTA), WorldCom, Inc. (Worldcom), South Carolina Fair Share (S.C. Fair Share), the Women's Shelter, the South Carolina Public Communications Association (SCPCA), John C. Ruoff, PhD (Ruoff), American Communications Services, Inc. (ACSI), and LCI International, Inc. (LCI). Pro-Parents intervened in this case, but did not appear at the hearing. The Commission Staff (the Staff) also participated in the hearing.

SCTA was represented by M. John Bowen, Jr., Esquire and Margaret Fox, Esquire. SCTA presented the testimony of Peter F. Martin and H. Keith Oliver. GTE was represented by Steven W. Hamm, Esquire and William Flemming, Esq. GTE presented the testimony of Cedric L. Tracy. BellSouth was represented by Harry M. Lightsey, III, Esquire, Caroline Watson, Esquire, and William Ellenburg, Esquire. United was represented by James Wright, Esquire and Richard Whitt, Esquire. Neither BellSouth nor United presented witnesses in this case.

With regard to the Intervenor, MCI was represented by John M.S. Hoefer, Esquire, and Marsha A. Ward, Esquire. MCI presented the testimony of Melba Reid. The Alliance was represented by Robert Guild, Esquire. The Alliance presented the testimony of Dr. Mark N. Cooper. AT&T was represented by Francis P. Mood, Esquire, Steve A. Matthews, Esquire, and Kenneth P. McNeeley,

Esquire. AT&T presented the testimony of L.G. Sather. The Board was represented by Ed Evans, Esquire, and James Rion, Esquire. The Board presented the testimony of Ted L. Lightle. The Consumer Advocate was represented by Elliott F. Elam, Jr., Esquire. The Consumer Advocate presented the testimony of Michael A. Berson. SCCTA was represented by B. Craig Collins, Esquire. WorldCom was represented by Frank R. Ellerbe, III. Both S.C. Fair Share and the Women's Shelter were represented by Susan B. Berkowitz, Esquire. The Women's Shelter presented the testimony of Kathy Riley. SCPCA was represented by John F. Beach, Esquire. SCPCA presented the testimony of Walter Rice, who adopted the prefiled testimony of Clifton Craig. John C. Ruoff, PhD appeared pro se. ACSI was represented by Russell B. Shetterly. LCI was represented by Robert Coble, Esquire, and Faye A. Flowers, Esquire. No witnesses were presented by SCCTA, WorldCom, S.C. Fair Share, ACSI, or LCI.

The Commission Staff (the Staff) was represented by F. David Butler, General Counsel. The Staff presented the testimony of Dr. R. Glenn Rhyne.

The language of S.C. Code Ann. Section 58-9-280(E) (Supp. 1996) is significant: "In continuing South Carolina's commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs, and consistent with applicable federal policies, the commission shall establish a universal service fund (USF) for distribution to a carrier(s) of last resort. The

commission shall issue its final order adopting such guidelines as may be necessary for the funding and management of the USF.... These guidelines must not be inconsistent with applicable federal law and shall address, without limitation, the following:

(1) The USF shall be administered by the commission or a third party designated by the commission under guidelines to be adopted by the commission.

(2) The Commission shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the commission.

(3) The Commission also shall require any company providing telecommunications service to contribute to the USF if, after notice and opportunity for hearing, the commission determines that the company is providing private local exchange services or radio-based local exchange services in this State that compete with a local telecommunications service provided in this State.

(4) The size of the USF shall be determined by the commission and shall be the sum of the difference, for each carrier of last resort, between its costs of providing basic local exchange services and the maximum amount it may charge for the services. The commission may use estimates to establish the size of the USF on an annual basis, provided it establishes a mechanism for adjusting any inaccuracies in the estimates.

(5) Monies in the USF shall be distributed to a carrier of last resort upon application and demonstration of the amount of the difference between its cost of providing basic local exchange

services and the maximum amount it may charge for such services.

(6) The commission shall require any carrier of last resort seeking reimbursement from the fund to file the information necessary to determine the costs of providing basic local exchange telephone services. In the event that a carrier of last resort does not currently conduct detailed cost studies relating to such services, the commission shall allow for an appropriate surrogate for such study.

(7) The commission shall have the authority to make adjustments to the contribution or distribution levels based on yearly reconciliations and to order further contributions or distributions as needed.

(8) After notice and an opportunity for hearing to all affected carriers, the commission by rule may expand the set of services within the definition of universal service based on a finding that the uniform statewide demand for such additional service is such that including the service within the definition of universal service will further the public interest; provided, however, that before implementing any such finding, the commission shall provide for recovery of unrecovered costs through the USF of such additional service by the affected carrier of last resort." With this statute as our charge, we can now analyze the evidence presented in this case, and address various issues necessary to the realization of our statutory duties as set out by the General Assembly.

As noted in the testimony of Dr. R. Glenn Rhyne, findings are

necessary regarding certain aspects of the intrastate universal service funding process, while other issues can be addressed in the future. We agree that while we must comply with the requirements of the Code section as listed above, the law does not require the resolution of all universal service and universal funding issues by August 27. We further agree with Dr. Rhyne's testimony that states that the size of the intrastate universal service fund should be established with the recognition that the size of the fund must be adjusted over time as cost models are employed by the Commission and actual funding is required. In addition, guidelines for the establishment of an administrative process (funding and management) for the USF can be determined within this hearing subject to periodic modifications. Various other guidelines can also be formulated to provide for a meshing of the interstate and intrastate universal service concepts to the greatest extent possible.

S.C. Code Ann. Section 58-9-280 (Supp. 1996) defines universal service as "... the providing of basic local exchange telephone service, at affordable rates, upon reasonable request, to all residential and single-line business customers within a defined area." Section 254 of the Federal Telecommunications Act of 1996 defined universal service as "... an evolving level of telecommunications services that the Commission (FCC) shall establish periodically... taking into account advances in telecommunications and information technologies and services." Section 254, Part B of the Telecommunications Act establishes the

basis for policies regarding the preservation and advancement of universal service. These policies are for quality services at affordable rates; access to advanced telecommunications and information services; access in rural and high cost areas to telecommunications and information services reasonably comparable to rates charged for similar services in urban areas; equitable and nondiscriminatory contributions from all providers of telecommunications services; specific, predictable, and sufficient federal and state support mechanisms necessary to preserve universal service; access to advanced telecommunications services for schools, rural health care providers, and libraries.

We believe that it is essential to mesh the components of state and federal law and the Federal Communications Commission's (FCC's) Universal Service Order to the greatest extent possible so as to avoid inconsistencies and to seek to optimize universal telecommunication service and universal service fund processes to the benefit of South Carolina consumers.

We compliment the participants in this proceeding for presenting some excellent proposals. Because of the sheer volume of these, we cannot herein fully discuss each one. However, this Commission wishes to assure all parties that all of the testimony and exhibits were considered before arriving at our conclusions in this matter.

Keith Oliver presented, on behalf of the South Carolina Telephone Association, a document called "Guidelines for the South Carolina Universal Service Fund (USF)," developed by the South

Carolina local exchange industry through the SCTA. Among other things, these guidelines call for the eligibility of non-primary lines, or additional lines (ADLs) for support through the USF. SCTA also proposes that contributions to the USF be recovered through an explicit surcharge on retail customers' bills. SCTA expresses its belief that USF is a support mechanism intended to replace displaced implicit subsidies, and that the USF should not result in a "windfall" for any particular carrier. Under the SCTA plan, effective with the implementation of the SC USF, incumbent local exchange carriers (ILECs) should reduce prices for intrastate services that include implicit support for universal service to offset the gross amount received from the SC USF. SCTA states that such price reductions should be revenue neutral to the carrier upon the implementation of the State USF.

Further, SCTA proposes that this Commission administer the SC USF. The Association states that if this Commission chooses to delegate this task, the Administrator must be a neutral third party which is independent of any affected provider's interest.

Under the SCTA guidelines, the Administrator shall be charged with periodically determining the levels of contributions required and assessing the various contributors to meet the distribution needs of the SC USF, subject to Commission oversight and rules. A single SC USF shall supply the funding requirements for all South Carolina universal service programs. Further, the South Carolina Interim LEC Fund, established by the Commission pursuant to statutory authority would transition into the SC USF when funding

for the SC USF is finalized and adequate to support the obligations of the Interim IEC Fund. In addition, the administrator would be responsible for assessing telecommunications carriers, distributing funds to the various qualified recipients, and preparing and filing with the Commission and providing participants with results of an annual audit of the fund. The administration of all aspects of the fund shall be done in a competitively neutral manner under the SCTA guidelines.

Further, SCTA proposes that contributors to the SC USF will be identified in accordance with Section 254 of the federal Telecommunications Act of 1996 and S.C. Code Ann. Section 58-9-280(E) (Supp. 1996). Under the SCTA plan, all telecommunications carriers and other providers offering telecommunications services within the State of South Carolina will contribute to the USF. Companies would be deemed to be offering telecommunications services in South Carolina if such telecommunications are being offered "for a fee" and such telecommunications are being offered to an end user, or to such classes of users as to be effectively available to an end user.

Under the SCTA plan, telecommunications carriers that assume the obligations of carrier(s) of last resort (COLR) will be eligible to receive intrastate universal service support. COLRs will be designated by the Commission. COLRs are carriers that have assumed the obligation to provide basic local exchange telecommunications services to all requesting customers within a designated service area, at no more than the Commission-approved

reasonable rates. To be designated a COLR by the Commission, the carrier must be willing and able and must certify its commitment to provide the defined services supported by the SC USF to any requesting customer's location within the designated service area; must advertise the availability of such services and the charges therefor using media of general distribution; must provide services at not more than the Commission-authorized maximum rates; and must meet all service quality standards established by the Commission. A COLR may satisfy its obligation to provide the defined services over its own facilities or a combination of its own facilities and resale of another carrier's services. The COLR may also satisfy its obligation to provide the defined services in part through the lease of unbundled network elements (UNEs). A carrier that provides service solely through the resale of other carriers' facilities is not entitled to universal service support. The Commission may define a minimum percentage of owned facilities and/or leased UNEs for qualification as a COLR.

The Plan as proposed by SCTA further proposes that distribution of monies in the SC USF shall be made monthly to each COLR. A COLR shall only receive USF support for the provision of the defined service that utilizes its own facilities. Any USF distributions associated with resale of another carrier's services will be provided to the underlying COLR. The amount of USF support received by a COLR who satisfies its obligation to provide the defined services in part through the lease of UNEs should not exceed the difference between the sum of the prices paid for the

UNEs utilized in providing the defined basic local exchange telecommunications service and the established price allowed to be charged to the end user customer, nor shall such support exceed the level of support provided to a facilities-based provider.

SCTA suggests that, in our later proceedings to address the methodologies to be used for the SC USF, the Commission should determine the appropriate single-party residential and single-line business rates for companies in the State of South Carolina. These rates would represent the maximum rate that a carrier of last resort is authorized to charge an end user customer for the supported basic local exchange telecommunications service (except that discounts may be available to end users under the residential Lifeline program.) The SCTA Plan goes on to state that if the maximum allowed rate exceeds the company's tariffed rate for that service, the Commission should provide for an appropriate transitional period for adjusting end user rates for the supported services to the maximum rate. The amount of universal service support for a particular carrier will be based on the difference between the Commission-approved maximum rate (or transitional rate) and the cost of providing basic local exchange telecommunications service, as determined in the cost methodology proceeding to be held this fall.

In addition, according to SCTA, support for a statewide Lifeline program will be a part of the SC USF. The Lifeline and current Link-up programs for low income consumers will not be inconsistent with the federal guidelines for such programs. As

provided for in Section 54.409(a) of the FCC rules, the Commission should establish narrowly targeted qualification criteria that are based solely on income or factors related directly to income as the basis for participation in these programs. Consumers meeting qualifying criteria should be free to select any eligible provider of their choice.

Further, pursuant to FCC Rules 54.505 and 54.507, federal funds may be available for funding discounts to eligible schools and libraries on a first-come-first served basis, contingent upon the state establishing intrastate discounts that are no less than the discounts applicable for interstate services.

SCTA estimates that the total level of universal service support needed by ILECs in South Carolina is about \$439.7 million. Of this amount, according to SCTA, the ILECs currently receive approximately \$27.6 million in federal USF funds. This amount also would include the approximately \$31.9 million ILECs currently receive from the Interim LEC Fund, which would transition into the SC USF once funding for the SC USF is finalized and adequate to support the obligations of the Interim LEC Fund. This amount does not include such things as Lifeline/Link-up support and any administrative costs of the fund.

Various modifications to the SCTA Guidelines have been proposed by AT&T, MCI, WorldCom, Inc., and ACSI, as well as other parties.

AT&T, MCI, WorldCom, ACSI (the group) first propose two changes to the SCTA definition of universal service. First,

under the group-proposed changes, new entrants offering service within South Carolina will designate the areas in which they intend to provide service and on which the Commission will act, and the cost and support mechanisms associated with such service. Second, certain other language regarding services is stricken. With regard to SCTA's Carrier of Last Resort proposal, the group proposes to add language to the paragraph of the guidelines making a distinction between the resale of tariffed services and the purchase of UNES.

The group proposes striking language which would automatically move funds from the Interim LEC Fund (ILF) to the USF. Without this change, the group believes that overfunding of the USF would occur. The group also proposes that a neutral third party administer the USF. The SCTA section on revenue neutrality would be eliminated under the group's proposed changes.

With regard to contributions to the USF, AT&T would amend the SCTA guidelines to allow funding from an assessment based on the intrastate end-user revenues of all telecommunications carriers net of payments to other carriers. Under AT&T's proposal, carrier USF assessments would be recovered through a stated surcharge on an end-user's bill.

The group proposes changes to SCTA's method of distribution from the fund in a manner which they say promotes consistency with the "own facilities" requirement of the federal act. The group also believes that funding should only be provided for the primary residential access line.

Other group proposed changes have to do with adjustments to contribution and distribution levels, recovery of USF contributions, the size of the fund, and rates.

With regard to support of schools, libraries, and healthcare providers, the group believes that the level of support being provided by federal funding is adequate and no state funding is required.

We also note with interest various proposals from other parties. The Commission Staff's testimony makes a proposal regarding the Lifeline program. The Women's Shelter raises various issues with regard to its particular situation, as does the South Carolina Public Communications Association, the Alliance for South Carolina's Children, the Consumer Advocate, and other participating groups and individuals.

Accordingly, after due consideration, we have decided that the proposals of the SCTA, as submitted in its Universal Service Guidelines are the most meritorious, in that they most successfully aid us in complying with the state and federal statutes, and should be adopted by us, with some modifications and additions as discussed below. We hold that the services to be funded are all services mandated by the FCC and South Carolina State law.

First, under the "Definition of Universal Service" section, the second subsection, we hereby modify the language to read as follows to ensure that Lifeline does not automatically require toll blocking: "And toll limitation at the request of the low

income consumer or in order to prevent further losses by the carrier of last resort, for low income consumers participating in the Lifeline (subject to technical feasibility)."

Second, under the "Definition of Universal Service" section, the third subsection, we modify the text to read as follows: "As initial carriers of last resort, ILECs shall establish designated service areas that shall not be inconsistent with federal guidelines (i.e. study areas for rural companies and wire center or smaller areas for non-rural companies). A new entrant may not receive USF support for serving an area that is smaller than the ILEC's designated service area." The purpose of this change is self-evident.

Next, we hold that this Commission will be the administrator of the Universal Service Fund. We believe that we have enough competent Staff to aid us in this task.

Further, we find that the estimated size of the fund is \$439.7 million, which is consistent with the testimony of SCTA. No funding will be provided until the state USF is implemented at a later date. All other issues in paragraph 9 of the guidelines as proposed by the SCTA related to the size of the fund will be deferred until after the next hearing in this proceeding.

In addition, all issues contained in paragraph 11 of the Guidelines proposed by the SCTA will be deferred until after the next hearing in this proceeding.

With regard to contributions to the USF, we hold that these shall be based on combined intrastate and interstate revenue,

which we believe is the most reasonable way to determine such contributions. We believe that combined revenues are an appropriate basis to determine contributions to the USF.

Further, with regard to carriers' costs, we acknowledge that carriers should be allowed to recover them, however, a decision related to the surcharge issue will be deferred until after the completion of the next hearing in this proceeding.

In addition, we adopt the very worthwhile proposal of the Staff witness Dr. Rhyne, related to the Lifeline program. We hold that the Lifeline Program should be extended to all eligible telecommunications carriers (carriers of last resort) within the State. By 1998, all carriers other than BellSouth shall participate in the Lifeline Program, and will receive Federal support of \$5.25 per customer without requiring any State funding. BellSouth is already in an existing Lifeline Program and by 1998 can increase the benefit to its customers to the maximum level of \$10.50 per customer without additional State funding. By 1999, all carriers of last resort would provide the maximum Lifeline Program benefit of \$10.50 per customer with the required additional State support coming from the intrastate USF. The criteria for qualifying for Lifeline support should remain the same as it is currently, at least until 1999.

We are also concerned about the needs of various temporary shelters as addressed by witness Kathy Riley. Therefore, we make the following order: Shelters whose principal purpose is to provide temporary (six to eight weeks) residential housing for

individuals or families in crisis qualify for residential rates for up to 3 lines after purchasing at least 1 business line. This is not part of universal service, but we are hereby characterizing this type service as a residential-type service. All ILECs shall implement the above referenced rate modification with billing cycles in November 1997.

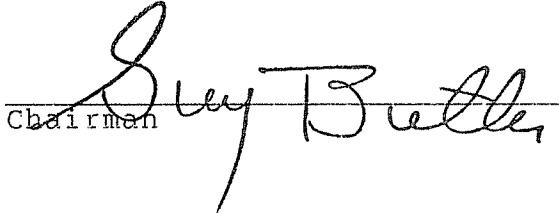
With regard to schools and libraries, we hereby adopt the Federal matrix related to discounts for schools and libraries.

Lastly, with regard to payphone service providers, we hold that the guidelines should be clarified, if necessary, to require payment from payphone service providers as a percentage of end user revenues, and not as a percentage of the payphone service providers local telephone service bill. The proposal presented by the South Carolina Public Communications Association related to public interest phones shall be deferred until after the next hearing in this proceeding.


In summary, we believe that the SCTA Guidelines, as modified and supplemented by the above stated principles, do much to aid us to implement the Universal Service Fund in South Carolina, pursuant to State law. We also believe that the modified and supplemented guidelines do much to mesh South Carolina's USF plan with that required by Federal law. We reserve the right to further modify the guidelines at a later date, should the need be shown to do so.

This Order shall remain in full force and effect until
further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)